tendency, however, in some American decisions to extend the limits of the invitee relationship. *Atlanta Cotton Seed Oil Co.* v. *Coffey*, 80 Ga. 145, 4 S. E. 759; *Illinois Central R. Co.* v. *Hopkins*, 200 Ill. 122, 65 N. E. 656.

DEEDS — CONSTRUCTION — LIFE ESTATE RAISED BY IMPLICATION. — A settlor by deed assigned the residue of a long term for years to trustees, to the use of A. and B., husband and wife, "for and during the term of their lives as tenants in common"; and "after the decease of the survivor" to the use of their children. A. died leaving children. *Held*, that B. was entitled during the remainder of her life to the whole of the net income from the property. *In re Stanley's Settlement*, 51 L. J. 206 (Ch. D.).

The court here raised a life-estate in the survivor by implication to fill the unintentional gap in the limitations. Such cross-limitations to the survivor have often been implied in the case of wills. *Ashley* v. *Ashley*, 6 Sim. 358; *Draycott* v. *Wood*, 8 L. T. (N. S.) 304. See *In re Hudson*, 20 Ch. D. 406, 415. But as to deeds, the authorities have declared that no estate or trust can arise by implication. See NORTON, DEEDS, 377; FEARNE, CONTINGENT REMAINDERS, 9 ed., 49. As regards legal estates, the cases bear them out. *Cole* v. *Levingston*, 1 Vent. 224; *Doe* v. *Dorvell*, 5 T. R. 518. See 1 JARMAN, WILLS, 6 ed., 660. In equity, however, there have been some decisions in which estates have been implied as in the principal case. *Tunstall* v. *Trappes*, 3 Sim. 286; *Allin* v. *Crawshay*, 9 Hare 382; *In re Akeroyd's Settlement*, [1893] 3 Ch. 363. But see *Mara* v. *Browne*, [1895] 2 Ch. 69, 81. It is difficult to see what justification there can be in these distinctions between wills and deeds, and between law and equity. If in a deed the intent of a settlor is clear beyond a reasonable doubt, a life interest in the survivor should certainly be implied. For, after all, the ultimate aim of the judicial construction of deeds, as of wills, is to carry out the intention of the parties. *Temple's Adm'r.* v. *Wright*, 94 Va. 338, 26 S. E. 844. See *Ballard* v. *Louisville & N. R. Co.*, 9 Ky. L. R. 523, 524, 5 S. W. 484, 485; *Walton* v. *Drumtra*, 152 Mo. 489, 497, 54 S. W. 233, 235; DEVLIN, DEEDS, 3 ed., § 844 *a*.

EMINENT DOMAIN — COMPENSATION — COMPENSATION FOR LOSS OF PROFITS CAUSED BY GRADING STREET. — A garage company held a lease of certain premises from year to year. Street grading done by the city cut off access to the garage for four months, causing a loss of profits to the company during that time. No evidence tended to show the leasehold less valuable after the grading than before. Act XVI, § 8, of the Constitution of Pennsylvania provides that just compensation be made for property "taken, injured or destroyed" by municipal corporations in the construction of highways. The company seeks to recover damages from the city. *Held*, that it may not recover. *Iron City Automobile Co.* v. *City of Pittsburg*, 98 Atl. 679 (Pa.).

Injury caused an abutting owner by the regrading of a city's streets is not a "taking" under the ordinary constitutional provision against taking private property for public use without just compensation. Therefore, if the grading is done under authority of law and with due care, in the absence of statute the owner is entitled to no compensation. *Callender* v. *Marsh*, 1 Pick. (Mass.) 417, 430; *Radcliff's Executors* v. *Mayor, etc. of Brooklyn*, 4 N. Y. 195, 203. See LEWIS, EMINENT DOMAIN, 3 ed., § 133. But under constitutional provisions, such as in the principal case, municipalities must make compensation for injuries caused abutting property. *City of Bloomington* v. *Pollock*, 141 Ill. 346, 31 N. E. 146; *Sheehy* v. *Kansas City Cable Ry. Co.*, 94 Mo. 574, 7 S. W. 579. See *City of Atlanta* v. *Green*, 67 Ga. 386; LEWIS, EMINENT DOMAIN, 3 ed., §§ 346, 348. The cases, however, are in hopeless conflict as to what elements determine the amount of the owner's damage. SEDGWICK, DAMAGES, 9 ed., § 1170. In general, where a leasehold is damaged, the measure of damages is the difference between the fair market value of the leasehold interest before

and after the construction of the improvement. *Philadelphia & R. R. Co.* v. *Getz*, 113 Pa. St. 214, 6 Atl. 356; *Mayor, etc. of Baltimore* v. *Rice*, 73 Md. 307, 21 Atl. 181. So, apart from the language of particular statutes the lessee cannot recover for permanent injuries to business. *Chambers* v. *South Chester*, 140 Pa. St. 510, 21 Atl. 409. *A fortiori*, he cannot recover for mere temporary loss of profits suffered during the progress of the improvements. *Plant* v. *Long Island R. Co.*, 10 Barb. (N. Y.) 26. But evidence of permanent injury to business has been held to be admissible, not as specific items of damage, but as an element in determining the reduced market value. *Laflin* v. *Chicago, etc. R. Co.*, 33 Fed. 415. See LEWIS, EMINENT DOMAIN, 3 ed., § 342; 3 SEDGWICK, DAMAGES, 9 ed., § 1169. Temporary loss of profits, however, does not tend to show a reduced market value of the leasehold. Consequently the principal case seems correct in allowing no recovery.

EQUITY — JURISDICTION — DAMAGES AWARDED AFTER EQUITABLE REMEDY HAS BECOME UNDESIRABLE. — The plaintiffs, induced by fraudulent representations, purchased from the defendant all the shares of capital stock in a theater company. The plaintiffs sued in equity, praying for a rescission of the sale, and damages. But at the hearing, the plaintiffs having in the meantime made the business a successful one, disclaimed a desire to have the transaction rescinded and prayed for damages. *Decreed*, that the bill will be retained to award damages. *Rosen* v. *Mayer*, 54 Bk. & Tr. 519 (Mass.).

A court of equity will not generally retain a bill to assess compensatory damages unless given in addition or as an incident to some special equitable relief. *Green* v. *Stewart*, 19 App. Div. 201, 45 N. Y. Supp. 982; *Collier* v. *Collier*, 33 Atl. 193 (N. J. Eq.); *Alger* v. *Anderson*, 92 Fed. 696. See 1 POMEROY EQ. JUR., 3 ed., § 237. But equity will retain the bill and award damages where the special relief which was originally possible becomes impracticable after the bringing of the suit. *Grubb* v. *Starkey*, 90 Va. 831, 20 S. E. 784; *Holland* v. *Anderson*, 38 Mo. 55; *Moon* v. *Nat. Wall-Plaster Co.*, 31 Misc. 631, 66 N. Y. Supp. 33. See *Morss* v. *Elmendorf*, 11 Paige (N. Y.) 277, 288. Indeed such relief is often given though the special relief sought became impracticable before the bringing of the suit, provided the plaintiff, when he brought his bill, was ignorant of that fact. *Milkman* v. *Ordway*, 106 Mass. 232; *Tenney* v. *State Bank of Wisconsin*, 20 Wis. 152. The principle underlying this class of cases seems to be that where the plaintiff has come into equity in good faith, asking for a distinctively equitable remedy, to which he was once entitled, the bill should not be dismissed even though damages are found to be the only remedy. This doctrine commends itself as in accord with the growing tendency of equity to give complete relief where its jurisdiction has once been invoked. In the present case the fact that the plaintiff himself has made the equitable remedy no longer needed should not work to his disadvantage. There is danger that a plaintiff, who wants damages, may get into equity by a pretense of originally seeking equitable relief, and thus deprive the defendant of his right to a jury. But this should rather cause equity carefully to scrutinize the *bonâ fides* of the plaintiff's position than to deny relief in every case.

EQUITY — JURISDICTION — RESTRAINT OF INJURIOUS FALSEHOODS. — At an early stage of a political campaign the plaintiff publicly refused to be a candidate for governor. He later changed his mind and actively sought the nomination. On the day preceding the primary elections the defendant newspaper published his two months' old letter of declination under staring headlines announcing that plaintiff had decided not to run. It was admitted that the defendant acted in bad faith. The trial court enjoined a repetition of the publication. *Held*, that the restraining order be reversed and dismissed. *Howell* v. *Bee Pub. Co.*, 158 N. W. 358 (Neb.).

For a discussion of this case, see NOTES, p. 172.